

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 5**

CATERPILLAR, INC.

Employer

and

Case 05-RD-184405

MARY BENNETT, an Individual

Petitioner

and

INTERNATIONAL UNION, UNITED  
AUTOMOBILE, AEROSPACE AND  
AGRICULTURAL IMPLEMENT WORKERS,  
AFL-CIO, AND ITS LOCAL 1872

Union

**DECISION AND ORDER**

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, herein called the Act, a hearing was held before a hearing officer of the National Labor Relations Board, herein called the Board. Mary Bennett (Petitioner), an employee of Caterpillar, Inc. (the Employer), filed the petition, as amended at the hearing, seeking to decertify International Union, United Automobile, Aerospace and Agricultural Implement Workers, AFL-CIO and its Local 1872 (individually, the International Union or Local 1872; collectively, the Union) as the exclusive collective-bargaining representative of the following unit of employees:

All production, maintenance, and parts department employees employed at the Employer's York, Pennsylvania plant, but excluding all office clerical employees (except timekeepers) and all guards, professional employees, and supervisors as defined in the Act.

The petition asserts that there are approximately 228 employees in the bargaining unit. The parties stipulated, and I find, that the Union is a labor organization within the meaning of

Section 2(5) of the Act, that the Employer is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, is subject to the jurisdiction of the Board, and that there is no contract bar or any other bar in existence that would preclude processing of the petition.

## **I. ISSUE AND POSITIONS OF THE PARTIES**

The sole issue presented at hearing is whether the petitioned-for single-unit facility is appropriate. The Union contends that the unit employees at the York location have been merged into a multi-location unit that encompasses a number of the Employer's facilities across the country. Therefore, the Union argues, the petition must be dismissed because the petitioned-for unit is not coextensive with the recognized multi-location unit. In support of its contentions, the Union asserts that it has bargained with the Employer on a multi-location basis for nearly 50 years, this bargaining history has resulted in successive multi-plant collective bargaining agreements, which are ratified by a vote of all employees at all plants pooled into a single electorate, and that no individual local union may enter into a local agreement that contradicts the terms of the nationwide, multi-plant contract. While the contract refers to "bargaining units" in the plural, the Union argues that this language is not controlling, and does not outweigh the lengthy history of multi-location bargaining. The Union further asserts that the community of interest factors relied on by the Employer do not apply to unit determinations in a decertification election. Finally, the Union maintains that recent stipulations to Board decertification elections in Denver with a single-plant bargaining unit do not preclude it from asserting that the York facility has been and remains merged into a multi-location unit.

The Petitioner and the Employer maintain that a unit limited to the unit classifications at the York location is the appropriate unit, and the Region should proceed to conduct an election in that unit. The Employer argues that the Union was certified as the representative of the York facility on a single-facility basis, and that while the parties have for many years engaged in centralized bargaining covering multiple facilities, the parties' contract continues to refer to multiple bargaining "units" in the plural, and specifically identifies the York facility as an individual bargaining unit. The Employer points out that each facility, including the York location, is able to enter into local agreements setting terms and conditions of employment unique to that facility, covering subjects such as wages, benefits, vacation policies, and overtime scheduling.

The Employer further contends that even assuming the several bargaining units merged over time, operational changes over approximately the past 20 years have reestablished the units' separate identities. Relying on *Specialty Healthcare and Rehabilitation Center of Mobile*, 357 NLRB 934 (2011), the Employer argues that the Board's traditional community of interest factors demonstrate that the petitioned-for unit is *an* appropriate unit and the Union has not met its "heavy burden" of establishing that the single-facility York unit is inappropriate.

Finally, the Employer cites to the two stipulated election agreements at its Denver facility. The Employer asserts that because the International Union (combined with the local union in Denver) stipulated to elections with a single-facility bargaining unit, the Union here is estopped from asserting its York employees cannot proceed to an election on the same single-facility basis.

For the reasons set forth below, and after careful consideration of the record evidence, extant Board law, and the Employer's and Union's post-hearing briefs, I find that the York unit merged into a multi-location unit, which precludes processing of the petition.<sup>1</sup>

## **II. FACTS**

On April 5, 1954, the Board certified Local 786 of the UAW as the representative of employees at the Employer's York, Pennsylvania facility.<sup>2</sup> Prior to 1967, the parties negotiated separately for unit employees employed at the York facility. In about 1967, the International Union began to bargain a Central Agreement with the Employer, which covered all of the Employer's facilities around the country represented by the International Union. That practice continued through successive contracts up to the most-recent negotiations, which occurred in 2011. As of February 28, 2011, that included some 11 facilities covering approximately 9,600 employees.<sup>3</sup> As of the date of the hearing in this matter, the number of employees covered by the Central Agreement had decreased to approximately 5,000.

The most-recent Central Agreement is dated February 28, 2011. By its terms, it remains in effect until March 1, 2017, and thereafter from year to year unless (by following the terms found within the Central Agreement) a party gives notice of a desire to modify. The Central

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<sup>1</sup> At the hearing, the Petitioner stated she was not prepared to proceed with the petition if I found the York unit was merged into a multi-location unit.

<sup>2</sup> Local 786 amalgamated with Local 1872 in 2012 and at that point Local 786 ceased to exist, leaving Local 872 as the local representative, combined with the International Union, as the bargaining representative of the bargaining unit employees at the York facility.

<sup>3</sup> Eight of the 11 facilities are located in Illinois: Mapleton, Mossville, Morton, Aurora, Decatur, Pontiac, and two in East Peoria. In addition to the York facility, the other covered facilities were located in Denver, Colorado, and Memphis, Tennessee. The Memphis facility closed at some point after the negotiation of the most-recent Central Agreement, and, as discussed below, the Denver employees voted in 2016 against further union representation.

Agreement, in its Article 2 (Recognition), includes a list of “bargaining units to which the recognition of the International and the respective Local Unions extends,” which includes at Article 2.1.iii, “Local 786 and International Union,” and that “[t]he geographical limits of the above unit shall only include the York distribution Center.”

The bargaining team for the UAW and its locals consisted of 30 individuals, including 13 representatives from the eight local unions involved in the bargaining. In 2011, Dennis Williams, UAW Secretary-Treasurer and Director, National Caterpillar Department, served as the lead negotiator for the combination of the International Union and the locals for the various Employer facilities covered by the Central Agreement. An official of the International Union has served as the lead negotiator since 1967, when the parties began their practice of negotiating a Central Agreement covering multiple Employer facilities. According to the testimony given at the hearing, the Central Agreement is negotiated by the International Union with participation of local union representatives at the table. Those local representatives are also signers to the Central Agreement. Representatives from the International Union and the locals also serve on various committees that are established to develop proposals on various topics.

According to the Central Agreement, the complete agreement is comprised of the “Central Agreement and appended letters of agreement (together with the appropriate local Agreements when made and ratified).” (UX1, Art. 2.2) The Central Agreement also provides that “[n]o Local Agreement shall change, alter or detract from this [Central] Agreement, but rather shall only supplement this [Central] Agreement to the extent not inconsistent with it. If there is a conflict or inconsistency between the provisions of this [Central] Agreement and those of and Local Agreement, the provisions of this [Central] Agreement shall be controlling.” (UX1, Art. 2.2)

The procedure for ratifying the collective-bargaining agreement is established by the Central Agreement. That provision provides for a single nationwide vote of the unit employees at the various facilities covered by the Central Agreement. The votes are pooled and if a majority of the pooled votes is in favor of the contract, the agreement is ratified. A vote against ratification by a majority of the employees at a particular facility does not prevent the ratification of the agreement if a majority of the pooled votes is in favor of ratification. There have been times when a majority of unit employees at one facility voted against ratification of the Central Agreement, but the majority of the pooled multi-location vote was in favor of ratification. For instance, in 2004 a majority of voters in the Decatur facility voted against the contract, but the pooled multi-facility vote was in favor of ratification. Based on the results of the pooled multi-facility vote, the 2004 Central Agreement was ratified and it was binding on the Decatur facility.

The Central Agreement covers such essential terms as wages, hours, vacation and separation, and seniority. The parties also negotiate a centralized benefits agreement establishing the fringe benefits for the employees covered by the Central Agreement. Under the Central Agreement, the International Union has the sole authority to arbitrate grievances that involve the interpretation of the Central Agreement. The parties have negotiated a number of terms that are unique to the York facility, such as different wage rates and a different wage progression, but those terms are contained in the Central Agreement. Similarly, while the Employer's right to use supplemental employees at York differs from the other existing facilities, that right is set forth in a provision of the Central Agreement. Bill Scott, an official with the International Union, served as the lead negotiator of the 2011 supplemental agreement applicable to the York facility.

In 1998, all manufacturing operations at the York facility were ceased and the York facility has been a parts-only distribution facility since that time. The facility in Morton, Illinois,

is also a parts-only facility, and, in 2011 when the current Central Agreement was negotiated, there were two additional parts-only facilities operated by the Employer: Memphis, Tennessee; and Denver, Colorado. The Memphis facility has since closed. In 2016, the unit employees in Denver voted, pursuant to a stipulated election agreement in Case 27-RD-174794, against further representation by the International Union and Local 1415, the local at the Denver facility. A certification of results issued in that case on May 25, 2016, and, since that date, employees at the Denver facility have not been covered by the Central Agreement.<sup>4</sup>

### **III. FACTORS RELEVANT TO DETERMINING WHETHER A PROPER MERGER OF BARGAINING UNITS HAS TAKEN PLACE**

The issue presented is whether the single-facility unit described in the petition has merged into a larger multi-location unit and warrants dismissal of the petition. The general rule is that the bargaining unit in which a decertification election is held must be coextensive with the certified or recognized bargaining unit. *Campbell Soup Co.*, 111 NLRB 234 (1955). The Board seeks to balance employees' rights guaranteed by Section 7 of the Act with its obligation to fulfill the statutory objective of maintaining industrial stability. *Gibbs & Cox*, 280 NLRB 953, 954-955 (1986). It is well-settled that an employer and union can merge separately certified or recognized units into a single overall unit. See, e.g. *Wisconsin Bell, Inc.*, 283 NLRB 1165, 1165 (1987); *Gibbs & Cox, Inc.*, 280 NLRB at 954. When such a merger occurs, "the larger, merged unit is the only unit appropriate for purposes of a representation election," and a petition seeking a different unit is properly dismissed. *Wisconsin Bell, Inc.*, 283 NLRB at 1165 (citing *White-Westinghouse Corp.*, 229 NLRB 667 (1977); *General Electric Co.*, 180 NLRB 1094 (1970)).

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<sup>4</sup> In 2015, a decertification petition (Case 27-RD-147412) was filed covering the Denver facility. The parties stipulated to an election, and the unit employees voted in favor of continued representation by the International Union and Local 1415.

To determine whether separate units have in fact been merged into a single overall unit, the Board considers several factors, such as the recognition clause and other language of the collective bargaining agreement, the parties' conduct, bargaining history, and the relative duration of the unit. See, e.g., *Albertson's, Inc.*, 307 NLRB 338, 338-339 (1992); *Green-Wood Cemetery*, 280 NLRB 1359 (1986). It does not appear that the Board has adopted any legal presumptions regarding mergers, or imposed any evidentiary burdens, such as requiring one party to prove individual units have merged. Thus, I have considered whether the totality of the circumstances shows by a preponderance of the evidence that there has been a merger of bargaining units in this case.

#### IV. ANALYSIS

Taken as a whole, I find that the parties' course of conduct establishes that the York employees have been merged into a multi-plant bargaining unit. The evidence developed at the hearing shows that for nearly 50 years, the Employer, the International Union, and its several local unions have bargained on a multi-facility basis and incorporated common terms and conditions of employment into successive Central Agreements. The facts of this case are parallel to those in *White-Westinghouse Corporation*, 229 NLBB 667 (1977) and *Westinghouse Electric Corporation*, 227 NLRB 1932 (1977), where the Board found that separately-certified bargaining units had merged through the parties' course of conduct in bargaining. In those cases, as is the case here, the Union's bargaining committee is comprised of representatives from both the International Union and the respective local unions. The product of bargaining is a multi-location agreement that establishes many, though not all, of employees' terms and conditions of employment. That contract is ratified based on a majority of all votes cast across all facilities, without any requirement that each facility's employees ratify the agreement, and that ratified

agreement applies to all facilities even if was not supported by a majority of the employees at that site.<sup>5</sup> Similarly, in this case, as in *White-Westinghouse* and *Westinghouse Electric*, the Central Agreement allows for the negotiation of local supplemental agreements, provided those local agreements do not conflict with the Central Agreement. In another similarity between these cases, the authority to arbitrate grievances is reserved to the International Union, and local unions have no authority to independently arbitrate grievances.

Although the Central Agreement describes bargaining “units” in the plural, and states that “[t]he geographical limits of the above unit shall only include the York distribution Center,” the Board has repeatedly found that similar descriptions of individual facilities do not outweigh other evidence showing that the units have merged. In *Westinghouse Electric*, 229 NLRB at 1943, the Board found that the national agreement’s repeated referrals to “units” in the plural was not inconsistent with a finding of multi-plant bargaining, citing *Atlantic Richfield Company*, 208 NLRB 142, 144 n.5 (1974)(“The Board has frequently held, however, that negotiation of supplemental agreements on a local basis for strictly local problems, and reference in national agreements to “units” are not inconsistent with a finding of multiplant bargaining. (citations omitted).” Likewise, in *Gold Kist, Inc.*, 309 NLRB 1, 1 (1992), the Board held, “[a] reference to

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<sup>5</sup> The Union argues that absent a single national bargaining unit, it would have been an unfair labor practice for the York local to pool its ratification votes with sister locals, and make a contract in the York facility contingent on its sister local’s consent, citing *Paperworkers Local 620 (International Paper Co.)*, 309 NLRB 44, 44-45 (1992). There, the Board found that by adopting such a procedure, the union had refused to execute an agreement based on a nonmandatory subject of bargaining. Had the employer, for whatever reason, agreed to this procedure, it is possible to read that decision as holding the arrangement would have been lawful. Accordingly, I do not view the *Paperworkers Local 620* decision to hold that such a system *per se* violates the Act (i.e. that it is an illegal subject of bargaining.) Nonetheless, I find that the pooled ratification procedure is a factor that supports the finding that the York unit has been merged into the multi-location unit.

units in the plural is not sufficient to require a finding of separate units where the history shows a merged unit.”

For similar reasons, I find that the negotiation of local agreements specific to the York facility do not militate for a finding that it has not merged into a multi-facility bargaining unit. I place primary importance on the facts that local supplemental agreements may not conflict with the Central Agreement, and that there is no evidence that the York facility has negotiated any local agreements that conflict with the Central Agreement. However, I do not find the International Union’s participation in (or supervision of) the negotiation of local agreements particularly persuasive on the merger issue. Regardless of whether the York facility has been merged into a multi-plant unit, the International Union is a joint Section 9(a) representative of the York employees with Local 1872, and therefore, the International Union could participate in local negotiations even if York were a separate bargaining unit.

The Employer argues that the York facility is autonomous because many of the terms and conditions of employment at that facility differ from those at other facilities covered by the Central Agreement. Specifically, by dint of its status as a parts distribution facility rather than a manufacturing facility, the York location does not participate in annual vacation shutdowns, has different paid holidays and paid time off (Y-time benefits). It also has a unique contract provision that allows for time off during deer-hunting season, among other distinctions. But no party contends that these differences conflict with the Central Agreement. Rather, it appears that the parties have negotiated these terms into their local agreement as a means of tailoring the Central Agreement to meet the specific needs of the York facility, and I conclude that the parties’ local agreements fall within the Board’s statement that the negotiation of local agreements to address local problems is not inconsistent with a multi-facility bargaining unit.

The Employer argues that the principles for determining what is *an* appropriate bargaining unit as announced by the Board in *Specialty Healthcare and Rehabilitation Center of Mobile*, 357 NLRB 934 (2011) should apply with equal force in decertification proceedings as they do during an initial representation proceeding. The Board, however, does not apply the same principles applicable to determining the appropriateness of units in an initial representation proceedings when determining whether a unit at one site has been merged into a larger unit. Indeed, to adopt the Employer's argument would require overruling decades of precedent requiring that the only appropriate unit for a decertification election is the then-certified or recognized bargaining unit. See, e.g., *Campbell Soup Co.*, 111 NLRB at 235-236; *Green-Wood Cemetery*, 280 NLRB at 1360. Moreover, I note that when the Board has been asked to consider community of interest factors in similar circumstances, it has declined to do so. In *Gold Kist, Inc.*, 309 NLRB at 1-2, the Board adopted the Regional Director's decision and order dismissing a decertification petition, which acknowledged there were facts showing a separate community of interest between two putative bargaining units. Nonetheless, the Board agreed that while these separate community of interest factors may be relevant in an initial representation case, "these factors are not relevant in a decertification case where the evidence shows a long history of merged units up to an including the most recent collective-bargaining agreement." Thus, the Board affirmed the dismissal of the petition because the proposed unit was not coextensive with the existing recognized unit. *Id.* at 2. Consistent with extant Board law, I conclude that *Specialty Healthcare* is inapplicable to the facts of this case, and decline to apply it to determine whether the York location is an appropriate unit for a decertification election.<sup>6</sup>

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<sup>6</sup> The Employer suggests that even if the York unit had at one time merged into a multi-facility unit, more-recent operational changes, particularly the cessation of manufacturing activities to

Finally, I find that the two recent decertification elections at the Employer's Denver facility are not inconsistent with a finding that the York facility is part of a multi-location unit. The Employer contends that by stipulating to these elections, the Union is estopped from claiming that there is a multi-location bargaining unit. In response, the Union claims, among other things, that the Board has already disposed of this issue in *Westinghouse Electric Corp*, where it found that a union's failure to raise a merger argument in prior decertification petitions at single plants did not preclude it from raising that argument later. 227 NLRB at 1934.

However, in the *Westinghouse Electric* decision, the Board found the prior decertification petitions cited by the employer were too remote in time to outweigh the other evidence of merger, not that they were irrelevant. In that case, it appears that the most-recent decertification petition was in 1963, or 10 years before the beginning of the then-applicable 1973-1976 collective bargaining agreement. Conversely, in this case, both of the Denver decertification proceedings occurred during the term of the 2011 Central Agreement, with the last one occurring earlier this year. Thus, although I find the Denver decertification proceedings relevant, I do not find that they outweigh the other evidence, showing a merged multi-facility unit. When balanced against the decades of bargaining history, the supremacy of the Central Agreement over local supplements, and the pooled ratification procedures, in my view, the Denver stipulated election agreements, standing alone, are insufficient to show the parties intended to separate any of the Employer's other facilities from the multi-location unit. Instead, I conclude that the stipulated

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becoming a parts distribution facility, have resulted in York reestablishing itself as a stand-alone unit. Yet at the time it negotiated the 2011 Central Agreement, there were at least four parts distribution facilities: York: Denver; Memphis; and Morton. Therefore, at that time, York was not the unique outlier that it could be viewed as today. Even if there are significant distinctions between its manufacturing and parts facilities, the Employer nonetheless agreed in the most-recent Central Agreement to the continued inclusion of the parts facilities in the multi-facility unit.

election agreements for the Denver facility are akin to the Employer and International Union agreeing to sever one location from the merged unit, which they are permitted to do. See, e.g. *Bozzuto's, Inc.*, 277 NLRB 977 (1985)(unit scope is a permissive subject of bargaining.)

The cases cited by the Employer do not require a different result. *Hampton Inn & Suites*, 331 NLRB 238 (2000), an initial representation case, involved whether an employer had demonstrated “unusual circumstances” sufficient to grant its request to withdraw from a stipulated election agreement. The Board held that it had not, and was bound by the agreement. However, the Board did not hold, as urged by the Employer, that parties to a stipulated election agreement are bound by those stipulations in all *future* cases. Rather, the Board’s decision was limited to holding the employer to the terms of its agreement reached in that specific case.

In *Red Coats, Inc.*, 328 NLRB 205 (1999), the Board found that the employer was equitably estopped from asserting that the single-facility bargaining units it voluntarily recognized were inappropriate after it unilaterally withdrew recognition from the union. There, the Board held that the union had detrimentally relied upon the employer’s voluntary recognition, because the employer’s actions caused the union to mistakenly believe that the employer would continue to recognize the bargaining units on a single-location basis. However, the detrimental reliance in that case is not present in this one. The Denver election agreements concerned only the Denver facility, and said nothing about characterizing the remainder of the multi-facility unit. None of the terms contained in those election agreements suggests that the parties were agreeing that facilities other than Denver could be severed from the multi-facility unit, nor are there other contemporaneous facts showing that a party could reasonably rely on the Denver stipulations as intending such an effect.

## **V. CONCLUSIONS AND FINDINGS**

Based on the entire record in this matter and in accord with the discussion above, I find and conclude as follows:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed;
2. The Employer is an employer engaged in interstate commerce within the meaning of Section 2(2), (6), and (7) of the Act, and it will effectuate the purposes of the Act to assert jurisdiction in this case;
3. The International Union and Local 1872 are labor organizations within the meaning of Section 2(5) of the Act;
4. No question affecting commerce exists concerning the representation of the petitioned-for employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

## **VI. ORDER**

It is hereby ordered that the petition is dismissed.

### **RIGHT TO REQUEST REVIEW**

Pursuant to Section 102.67(c) of the Board's Rules and Regulations, you may obtain a review of this action by filing a request with the Executive Secretary of the National Labor

Relations Board. The request for review must conform to the requirements of Section 102.67(d) and (e) of the Board's Rules and Regulations and must be filed by January 3, 2017.

A request for review may be E-Filed through the Agency's website but may not be filed by facsimile. To E-File the request for review, go to [www.nlr.gov](http://www.nlr.gov), select E-File Documents, enter the NLRB Case Number, and follow the detailed instructions. If not E-Filed, the request for review should be addressed to the Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570. A party filing a request for review must serve a copy of the request on the other parties and file a copy with the Regional Director. A certificate of service must be filed with the Board together with the request for review.

Dated: December 19, 2016

(SEAL)

/S/ CHARLES L. POSNER

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